

HOUSE FILE \_\_\_\_\_  
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Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act providing for the regulation of packers and the purchase  
2 of swine from producers, and providing for penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1291HH 82  
5 da/je/5

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1 1 Section 1. NEW SECTION. 202D.1 PURPOSE.  
1 2 The purpose of this chapter is to increase competition and  
1 3 transparency among packers that purchase swine from producers.  
1 4 Sec. 2. NEW SECTION. 202D.2 DEFINITIONS.  
1 5 1. "Base price" means the price paid for swine, delivered  
1 6 to a packer, before application of any premiums or discounts,  
1 7 and expressed in dollars per hundred pounds of hot carcass  
1 8 weight as calculated in the same manner as provided in 7  
1 9 C.F.R. } 59.30.  
1 10 2. "Business association" means the same as defined in  
1 11 section 202B.102.  
1 12 3. "Controlling interest" means actual control of a  
1 13 business or the exercise of material participation, directly  
1 14 or indirectly, in the management and policies of a business,  
1 15 whether through the ownership of voting securities, by  
1 16 contract, or otherwise.  
1 17 4. "Covered packer" means a packer that is required to  
1 18 report to the United States department of agriculture each  
1 19 reporting day purchase data and slaughter data regarding swine  
1 20 as provided in section 202D.3. However, a covered packer does  
1 21 not include a packer which has a controlling interest in only  
1 22 one packing plant.  
1 23 5. "Department" means the department of agriculture and  
1 24 land stewardship.  
1 25 6. "Federal Meat Inspection Act" means the same as defined  
1 26 in section 189A.2.  
1 27 7. "Nonaffiliated producer" means a producer who sells  
1 28 swine to a packer. In addition, all of the following must  
1 29 apply:  
1 30 a. The producer has less than a one percent equity  
1 31 interest in the packer, including but not limited to as a  
1 32 shareholder, partner, member, or beneficiary.  
1 33 b. If the producer is a business association, the packer  
1 34 has less than a one percent equity interest in the producer,  
1 35 including but not limited to as a shareholder, partner,  
2 1 member, or beneficiary.  
2 2 c. The producer is not an officer, director, employee, or  
2 3 owner of the producer who is also an officer, director,  
2 4 employee, or owner of the packer. If the producer is a  
2 5 business association, an officer, director, employee, or owner  
2 6 of the producer cannot also be an officer, director, employee,  
2 7 or owner of the packer.  
2 8 d. The producer does not owe a fiduciary responsibility to  
2 9 the packer.  
2 10 e. If the producer is a business association, the packer  
2 11 does not have an equity interest in the producer.  
2 12 8. "Packer" means a business association engaged in buying  
2 13 swine in commerce for purposes of slaughter, of manufacturing  
2 14 or preparing meats or meat food products from swine for sale  
2 15 or shipment in commerce, or of marketing meats or meat food  
2 16 products from swine in an unmanufactured form acting as a  
2 17 wholesale broker, dealer, or distributor in commerce.

2 18 9. "Processing plant" means the geographic location of an  
2 19 establishment as defined in section 189A.2 which is both of  
2 20 the following:  
2 21 a. Subject to inspection by the department pursuant to  
2 22 chapter 189A or the United States department of agriculture  
2 23 pursuant to the federal Meat Inspection Act.  
2 24 b. Slaughters an average of at least one hundred thousand  
2 25 swine per year during the immediately preceding five calendar  
2 26 years or has the capacity to slaughter that number of swine in  
2 27 any one of those years.

2 28 10. "Producer" means a person who holds an ownership  
2 29 interest or controlling interest in a business association  
2 30 that operates a location where livestock are fed or otherwise  
2 31 maintained, including a building, lot, yard, or corral; or  
2 32 holds an ownership interest or controlling interest in  
2 33 livestock which are fed or otherwise maintained at the  
2 34 location.

2 35 11. "Reasonable competitive bidding opportunity" means  
3 1 circumstances in which all of the following apply:  
3 2 a. A written or oral agreement does not preclude a  
3 3 producer from soliciting or receiving bids from other packers.  
3 4 b. No circumstances, customs, or practices exist that do  
3 5 any of the following:  
3 6 (1) Establish the existence of an implied contract.  
3 7 (2) Preclude the producer from soliciting or receiving  
3 8 bids from other packers.

3 9 12. "Spot market sale" means a purchase and sale of swine  
3 10 by a packer from a producer that specifies a firm base price  
3 11 that may be equated with a fixed dollar amount on the date the  
3 12 agreement is entered into under which the swine are  
3 13 slaughtered not more than seven days after the date on which  
3 14 the agreement is entered into, and under circumstances in  
3 15 which a reasonable competitive bidding opportunity exists on  
3 16 the date on which the agreement is entered into.

3 17 13. "Swine" means a porcine animal raised to be a feeder  
3 18 pig, raised for seedstock, or raised for slaughter.

3 19 Sec. 3. NEW SECTION. 202D.3 ELECTRONIC PACKER REPORTING  
3 20 == PURCHASE DATA FOR SWINE.

3 21 1. The department of agriculture and land stewardship  
3 22 shall establish an electronic packer reporting system which  
3 23 automatically receives data for all swine purchased and  
3 24 slaughtered as reported daily by packers to the United States  
3 25 department of agriculture pursuant to 7 U.S.C. ch. 38, subch.  
3 26 II, pt. C. The department of agriculture and land stewardship  
3 27 shall cooperate with the United States department of  
3 28 agriculture as necessary in order to establish and administer  
3 29 the electronic system.

3 30 2. The department of agriculture and land stewardship  
3 31 shall establish and administer the electronic packer reporting  
3 32 system in order to do all of the following:  
3 33 a. Provide timely, accurate, and reliable market  
3 34 information.  
3 35 b. Facilitate more informed marketing decisions.  
4 1 c. Promote competition in the swine slaughtering industry.  
4 2 d. Enforce the provisions of section 202D.4.

4 3 Sec. 4. NEW SECTION. 202D.4 SPOT MARKET SALE  
4 4 REQUIREMENTS.

4 5 For each reporting day, at least twenty-five percent of all  
4 6 swine slaughtered by a covered packer must be purchased from  
4 7 nonaffiliated producers by spot market sale.

4 8 Sec. 5. NEW SECTION. 202D.5 CITIZEN ACTION.

4 9 If a nonaffiliated producer cannot make a spot market sale  
4 10 to a covered packer on a reporting day because a covered  
4 11 packer violates section 202D.4, the nonaffiliated producer may  
4 12 bring a civil action against the covered packer. The  
4 13 nonaffiliated producer may bring the civil action in district  
4 14 court for Polk county, the district court of the covered  
4 15 packer's principal place of business in this state, or in the  
4 16 county where the nonaffiliated producer resides in this state  
4 17 or if the nonaffiliated producer is a business association, in  
4 18 the county of its principal place of business in this state.

4 19 A covered packer who is guilty of violating section 202D.4  
4 20 shall be liable to the nonaffiliated producer for three times  
4 21 the amount of the spot market sales price for the swine that  
4 22 the nonaffiliated producer would have received if the  
4 23 violation had not occurred. The court shall award the  
4 24 nonaffiliated producer who prevails in the civil action  
4 25 reasonable attorney fees and expert witness fees incurred by  
4 26 the nonaffiliated producer, to be paid by the covered packer  
4 27 and taxed as part of the costs of the civil action.

4 28 Sec. 6. NEW SECTION. 202D.6 PENALTIES.

4 29 A covered packer who violates a provision of section 202D.4  
4 30 is subject to a civil penalty of not more than twenty-five  
4 31 thousand dollars. The civil penalties collected under this  
4 32 chapter shall be deposited into the general fund of the state.

4 33 Sec. 7. NEW SECTION. 202D.7 ENFORCEMENT ACTION.

4 34 1. a. The attorney general's office is the primary agency  
4 35 responsible for enforcing this chapter.

5 1 b. The department shall notify the attorney general's  
5 2 office if the department has reason to believe that a  
5 3 violation of section 202D.4 has occurred.

5 4 2. The attorney general's office may bring an enforcement  
5 5 action in district court in Polk county, in the county where  
5 6 the violation occurs, or in the county where the covered  
5 7 packer has its principal place of business. The attorney  
5 8 general's office may do all of the following:

5 9 a. Apply to the district court for an injunction to do any  
5 10 of the following:

5 11 (1) Restrain a covered packer from engaging in conduct or  
5 12 practices in violation of this chapter.

5 13 (2) Require a covered packer to comply with a provision of  
5 14 this chapter.

5 15 b. Apply to district court for the issuance of a subpoena  
5 16 to obtain contracts, documents, or other records of a covered  
5 17 packer for purposes of enforcing this chapter.

5 18 c. Bring an action in district court to enforce civil  
5 19 penalties as provided in section 202D.6, including the  
5 20 imposition, assessment, and collection of the civil penalties.

5 21 EXPLANATION

5 22 This bill regulates packers engaged in the business of  
5 23 purchasing swine for slaughter and processing. It is based on  
5 24 the federal Agricultural Marketing Act of 1946 and specific  
5 25 provisions which require packers to report purchase data  
5 26 relating to swine for slaughter to the United States  
5 27 department of agriculture (7 U.S.C. ch. 38, subch. II, pt. C).  
5 28 The bill is also based on provisions included in S. 325  
5 29 introduced in the Senate of the United States on February 6,  
5 30 2003, which states an intent to increase competition and  
5 31 transparency among packers that purchase livestock, including  
5 32 swine from producers. That intention is rephrased in the  
5 33 first section of the bill.

5 34 The bill requires the department of agriculture and land  
5 35 stewardship to establish an electronic packer reporting system  
6 1 which is to automatically receive purchase data and slaughter  
6 2 data reported for swine by the United States department of  
6 3 agriculture and provided by packers on a daily basis.

6 4 The bill generally defines the term "packer" as a person  
6 5 who engages in buying swine for purposes of slaughter, or  
6 6 manufacturing or preparing meats or meat food products from  
6 7 swine. The bill uses the term "covered packer" to describe a  
6 8 packer required to report purchase data or slaughter data for  
6 9 swine to the United States department of agriculture.  
6 10 Generally, under the federal livestock reporting law, a packer  
6 11 is a person who owns a federally inspected processing plant  
6 12 which slaughters an average of at least 100,000 swine per year  
6 13 during the immediately preceding five calendar years.

6 14 The bill requires that when a covered packer purchases  
6 15 swine, it must reserve a percentage of its daily reported kill  
6 16 for the purchase of swine from nonaffiliated producers on the  
6 17 spot market. The bill defines a "spot market sale", in the  
6 18 same manner as federal law, to mean a purchase and sale of  
6 19 swine by a packer from a producer that specifies a firm base  
6 20 price on the date the agreement is executed, if the swine are  
6 21 slaughtered not more than seven days after the date on which  
6 22 the agreement is executed. It defines a "nonaffiliated  
6 23 producer" to mean a producer who holds no more than a de  
6 24 minimus equity interest (shares) in or fiduciary duty to the  
6 25 packer.

6 26 The bill provides enforcement mechanisms. A nonaffiliated  
6 27 producer may bring a legal action against a covered packer who  
6 28 violates the bill's provisions and may be awarded treble  
6 29 damages together with reasonable attorney fees and fees for  
6 30 expert witnesses. The bill imposes civil penalties upon a  
6 31 covered packer who violates the provisions of the bill.

6 32 The attorney general's office is the primary agency  
6 33 responsible for enforcing the bill's provisions. The attorney  
6 34 general's office may apply to district court for an injunction  
6 35 to restrain a covered packer from engaging in conduct or  
7 1 practices in violation of the bill's provisions; require a  
7 2 covered packer to comply with a provision of the bill; obtain  
7 3 a subpoena to obtain contracts, documents, or other records  
7 4 for purposes of enforcing the bill's provisions; or bring an

7 5 action in district court to impose and collect the civil  
7 6 penalties. The amount of the civil penalties and the  
7 7 authority granted to the office of the attorney general are  
7 8 similar to provisions included in Code chapter 202B which  
7 9 prohibits the ownership of swine operations by processors and  
7 10 restricts contract feeding contracts executed by processors  
7 11 and producers.  
7 12 LSB 1291HH 82  
7 13 da:rj/je/5